Supreme Court, U.S.
FILED

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

Andrew M. Harrow - PETITIONER

VS.

The Don Williams Corporation
(Dissolved 8/23/96)
Dillard Keen & Lillian Keen - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE DISTRICT COURT OF APPEAL
SECOND DISTRICT
LAKELAND, FLORIDA

PETITION FOR WRIT OF CERTIORARI

Andrew M. Harrow
105 US Hwy 301 South
Unit E
Tampa, FL 33619
(813) 621-0045

4688

QUESTION(S) PRESENTED

1. Does any judge have the right to re-write a contract?

2. Does any judge have the right to allow the defendants' attorney to change platintiffs' statements (testimony) during his closing arguments?

3. How can an appeals judge fairly sign an order when he couldn't find the case file on the day of the proceedings, and then continue on hearing just bits and pieces of oral testimony?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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PROOF OF SERVICE

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**
The opinion of the United States court of appeals appears at Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United State district court appears at Appendix ___ to the petition and is

[ ] report at _____; or,
[ ] has been designated for publication but is not yet report; or,
[ ] is unpublished.

[X] For cases from **state courts:**
The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Circuit Court of the Thirteenth Judicial Circuit appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the County Court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was_____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of appeals on the following date:_____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on_____ (date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. paragraph 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was November 2, 1998. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix ___.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. paragraph 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION - ARTICLE V

"The right to enter into binding contracts is guaranteed by both the United States Constitution and common law." "Nor shall any person be deprived of life, liberty, or property, without due process of law."

UNITED STATES CONSTITUTION - ARTICLE XIV, SECTION 1

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United Stated nor shall any state deprive any person or life, liberty, or property without due process of law."

UNITED STATES CONSTITUTION - ARTICLE VII.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law."

FLORIDA STATUTES 475.25(1)(a)

FLORIDA STATUTES 475.25(1)(d)

FLORIDA STATUTES 475.01(c)

STATEMENT OF THE CASE

THE FACTS UPON WHICH THIS PETITIONER RELIES

Although there were numerous facts relevant to and argued in the lower court appeal, those facts are not pertinent to the limited issue now before this Court. A more extensive recitation of the facts is contained in the lower court briefs.

In October 1990, Andrew M. Harrow, DBA Florida Auction Company and Don Williams, of the Don Williams Corporation, as co-brokers, entered into an agreement with Dillard Keen and Lillian Keen for an agreement granting an exclusive right to sell and auction real property until April 30, 1991. The brokers, Williams and Harrow, had agreed that the commissions would be split 50/50 between them (In Section 3, Brokers Commission). An auction was to be held no later than December 15, 1990. It was agreed that the sellers would advance Fifteen Hundred Dollars ($1,500.00) to the broker Harrow and agreed to reimburse an additional Fifteen Hundred Dollars ($1,500.00) for expense of advertising. Broker Harrow warranted that he would spend approximately Three Thousand Dollars ($3,000.00). Harrow up-fronted the balance of the Fifteen Hundred Dollars ($1,500.00) in advertising monies so the auction could commence. The auction took place on Saturday, December 1, 1990 at 9:00 A.M. Certain

terms of the sale were re-established which is quite normal for an auction. These terms and conditions are a requisite as an auction is not a private treaty negotiated sale as in an ordinary real estate transaction. So, in this light, the auctioneer dictates the deposit amounts, the terms of the sale, which would include a date whereby the buyer (successful bidder) would have to close. This was established at January 2, 1991.

Unfortunately, the auction itself was not successful in bringing a buyer. Subsequently, on December 13, 1990, only twelve days after the auction, Dillard Keen, Lillian Keen and Don Williams of the Don Williams Corporation, drafted a listing of cancellation agreement to Andrew M. Harrow for him to sign, and advised him of such.

Andrew M. Harrow of Florida Auction Company did not agree to the listing cancellation agreement and it was not signed. I refer to the Florida Commission Handbook, more specifically Rule F.S. 475.25 (1) (a) (Appendix 17, Page 285) This is the 'Bible' for the industry. 'Keen' and 'Williams' are guilty of Intent to violate statute: A broker is prohibited from committing fraudulent or dishonest acts covered by statutes. He is also prohibited from conspiring with others to commit these acts. Additionally, it is grounds for suspension for anyone to form an intent, design, or scheme to commit or perform any act which would further be

fraudulent or dishonest. The fact that there has been no loss or damage or that damage has been paid, compromise, or settled is no defense to suspension (475.25) (1) (a), F.S. The judge has allowed a lack of due process to the petitioner in that Keen and the co-broker, Don Williams, are in violation of Florida Statutes 475.25 (1) (d), F.S. under "Conversion". (Appendix 17, Page 285). A broker is prohibited to converting to his own use, or to the use of someone else, or withholding from the true owner without lawful excuse, anything of value which should be law be delivered to the other party or accounted for. This includes a share of a commission due to another broker or salesman, where the accused has collected the whole and fails to divide it as required by the agreement.

In addition, 'Keen' and 'Williams' have committed a "Conspiracy to defraud" (Florida Statutes 475.25 (1) (a), F.S.). (Appendix 17, Page 286) When two or more persons plan or agree to an unlawful act or perform a lawful act by unlawful means, they are guilty of a conspiracy. Any licensee who has aided, assisted, or conspired with another to engage in any prohibited conduct shall have his license suspended.

The judge erroneously failed to understand this "Conspiracy" This is all supported by the transcript (Dillard Keen's Testimony, Pg 99, Lines 6-25; Pg 100, Lines 1-25; Pg 101, Lines 1-9) (Don Williams Testimony, Pg 80, Lines 4-7 and Lines 21-25), (Pg 81,

Lines 2-24) and (Pg 68, Lines 1-25, Pg 69, Lines 1-25, Pg 70, Lines 1-9).

These questions were asked Dillard Keen by Dale Vash, Esquire under cross examination.

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BY MR. VASH:

Q. Mr. Keen, do you hold any licenses of any sort?

A. I have a real estate license, not active.

Q. What kind of license?

A. Real estate, salesman license.

Q. Salesman or broker?

A. Salesman.

Q. When did it become inactive?

A. 1976.

Q. Did you ever actually practice selling real estate as a real estate salesman?

A. Six months.

Q. Did you go through all the courses you needed To take to become a real estate salesman?

A. 1975 I had.

Q. As part of that training that you had, did you real estate contracts and brokerage contracts?

A. Yes, I did.

25. Q. Did you read this contract dated October

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1. 26th, 1990?
2. A. Yes, I did.
3. Q. And after reading that contract, did you --
4. testifying that you had earlier that it was your
5. understanding that the contract would end on January 31,
6. 1991; is that correct?
7. A. Yes, sir. That's what I was told.
8. Q. That's what you were told?
9. A. Right.
10. Q. The contract doesn't say that, though, does
11. It?
12. A. Mr. Harrow told me that the only reason for
13. that date was in case to protect him in case someone
14. came forward that they had talked to at the auction.
15. Q. If there was any confusion on that, how come
16 you didn't change that contract before you signed it?
17. A. I think I did ask him to change it, and they
18. assured me that if I was unhappy, I could get a release,
19. and I know in the real estate business that that happens
20. a lot of times.
21. Q. In other words, you were dealing with your
22. property and had a signed agreement in front of you that

23. you didn't fully understand and you were going to go on
24. the verbal representation as opposed to what was in
25. writing there? Is that what you're telling me?

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1. A. I understood the contract, yes.
2. Q. But the contract said exclusive right of sale
3. through April 30th, 1991; is that correct?
4. A. By two brokers. And one said that he wasn't
5. going to broker the property; therefore, neither were
6. doing anything to broker the property. Their duties
7. toward me as brokers were not being met, and I felt like
8. I had a right to go forward from there in another
9. Direction.

"THE BIG LIE"

(Appendix 11, Pg 134; Transcript Pg 99)

Dillard Keen testifies under oath that he was an "inactive Real Estate Salesman". (Lines 1-21)

However, in checking with the Florida Real Estate Commission (400 W. Robinson St, Suite N 308, Orlando, FL 32801, Telephone # (407) 245-0825)

Dillard Keen was an 'ACTIVE Real Estate Salesperson at that time. His license became "involuntarily inactive" in 1996. He took all the prescribed real estate courses as any other licensee. He just didn't

have an employer for that time period, so his license status becomes what they call "voluntarily inactive". He led the court to beieve he was out of real estate since 1976. However, he could probably become active today by taking additional continuing educational courses. I will forward this exact information to you as soon as it becomes available from the Florida Real Estate Commission.

The **"BIG LIE"** sheds a different light on the matter.

Dillard Keen was not the "naive" sole that he pretended to be in court. It appears he was an 'expert' in his 21 years as a 'Licensed", real estate professional (1975-1996).

He was not 'beguiled' by "Harrow" as he testified.

HE KNEW EXACTLY WHAT HE WAS SIGNING.

Also, please see broker commission page (Appendix 1, Page 8)

This perjury by 'Keen' is so critical because the hypothesis the defendants used as oral evidence is no longer valid.

These questions were asked Don Williams by Dale Vash, Esquire

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4. Q. Now, you signed an agreement with the Keens
5. on January 11th, the same day that you terminated
6. Mr. Harrow's arrangement; is that correct?

7. A. That's correct.

21. Q. So my question to your is why could you not
22. exert those same best efforts that you were able to
23. exert after January 11th under this same agreement you had
24. with Mr. Harrow and the Keens?
25. A. I did not have what I felt to be a valid listing in place.

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2. Q. It says you and Mr. Harrow. Doesn't it say
3. you and Mr. Harrow are the brokers of record for this
4. property?
5. A. It does.
6. Q. Doesn't that mean that both of you are the
7. listing brokers as well as having an exclusive right of
8. sale under this agreement?
9. A. It does.
10. Q. I don't understand what the distinction you
11. are trying to make.
12. A. Yes. That agreement was entered into for the
13. purposes of offering the property at auction. That had
14. come and gone and had failed miserably.
15. Q. So why couldn't you have continued your best

16. efforts that you were able to do after January 11th
17. under this same agreement?
18. A. Why would I want to earn a commission and
19. give half of it to someone else?
20. Q. That's why you really wanted out of this
21. agreement, isn't it? You didn't want to have to share a
22. commission with Mr. Harrow?
23. A. Of course.

24. MR. VASH: No further questions of this witness, your Honor.

(My Comment: After reading this, it is very clear what transpired in the mind of Don Williams. It was okay for Mr. Harrow to conduct the auction and share in the commission with Mr. Williams, but it wasn't acceptable now that the auction was unsuccessful, for Mr. Williams to want to share with Mr. Harrow.)

Mr. Jeske questioning Don Williams

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1. Q. After December 1st of 1990, what effort did
2. you, as one of the brokers to this contract of October
3. 26th, do to market the property?
4. A. I did nothing. I didn't have a listing.
5. Q. Is it fair to say you were not using your
6. Best efforts to market and sell this property?
7. A. Most certainly.

Q. Paragraph 4 of the contract of October 26th, Excuse me, October 26, 1990, calls for the brokers Plural to use their best efforts to procure a purchaser Of the real property; is that correct?

A. That's correct.

Q. Were you using your best efforts?

A. Following the auction, no.

Q. Were you failing to use your best efforts because Dillard and Lillian Keen told you not to use your best efforts?

A. No.

Q. Were they asking you to intentionally mess This deal up so they could somehow get rid of Mr. Harrow?

A. No.

Q. And isn't it true that basically you went to The Keens and told them I am not doing anything?

A. That's true

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Q. And as a matter of fact, you wrote a letter To Andrew Harrow dated September 24th of 1990 in which (wrong date-should be December 24th) you communicated to Mr. Harrow basically, Andy, I'm not

doing anything. You're not doing anything, and we need to get out of this?

A. Yes, I did.

Q. That's the basic message sent in your letter of September 24th of 1990?

A. You want an answer to that?

Q. Yes, sir.

A. The essence of the letter was that we, Mr. Harrow and myself, were doing a disservice to the Keens by our continued inactivity following the failure Of the auction and that we needed to get off of dead Center.

Q. Were you willing to market this property?

A. I was.

Q. Were you willing to try to find a buyer or Use your best efforts on behalf the Keens?

A. I was.

Q. Were you willing to do it while Mr. Harrow Was one of the brokers with you?

A. Prior to the auction, certainly. Following The auction, no.

Q. Did you communicate that to Mr. And

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Mrs. Keen?

2. A. Yes, I did.

3. Q. You told them you weren't willing to do, use

4. you best efforts, correct?

5. A. Right

6. Q. And did you tell them that you thought your

7. partner, Mr. Harrow, was also not using his best effort

8. at that point after December first of 1990?

9. A. That is correct. He was using no effort.

"THE SECOND BIG LIE"

Dillard Keen testified this was only an Auction Agreement (Appendix 11, Page 130, Transcript Page 95, Lines 14-18) per Mr. Harrow.

Don Williams testified this was only an Auction Contract. (Appendix 11, Page 116, Transcript Page 81, Lines 12-14) and (Appendix 11, Pages 99-100, Transcript Page 64, Lines 20-25 and Page 65, Lines 1-20)

However everything they said was negated by the "Agreement Granting Exclusive Right To Sell and Auction Real Property" (Caption of the Contract) (Appendix 1, Page 6).

Furthermore, it is clearly outlined under the Brokers Commission) section of the contract (Appendix 1, Page 8)

> (a) "Commission of ten percent (10%) shall be paid by the purchaser as an additional charge

or cost of purchase".

(See Auction Flyer for 10% Buyers Premium, Appendex 10, Page 34) (As defined above - is actually explained later in the contract)

(b) "In the event Sellers, on their own or through others, contract to sell the real property during the term of this Agreement, Brokers shall be entitled to payment of a commission from Sellers in the amount of 10% of the purchase price at the time the transaction takes place.

Section (b- above) is a standard listing agreement language used by all brokers with an "Exclusive Right to Sell," noting the word "during the term of this contract".

NOTE: The "switch" from a Buyers Premium for the Auction to a Sellers Fee for the remainder of the Contract, April 30, 1991 (a) to (b) of Brokers Commission Section.

This section (a) and (b) defines the scope of the work to be performed by the "Brokers". **Auction and Post Auction Payment. All parties to this contract were Licensed Real Estate Practitioners, not lay people**. (Except Mrs. Keen, who didn't testify.)

To later state that everything that "Harrow" told them was different than what they signed is "absurd".

The judge must have been confused of the licensure of an auctioneer. There is no such thing as a separate auctioneers license under real estate brokerage law. Every real estate broker has the right to auction property. However, very few have this specialty or skill.

A broker is a broker, is a broker. To say that Andrew M. Harrow DBA Florida Auction Company exclusive right to sell was void or invalid is to say that every exclusive right to sell is invalid and allow every owner not to pay a commission. 'Williams' could have auctioned the property for Keen under his brokers' license. That is a right of every broker.

A real estate broker is defined in F.S. 475.01 (c) as follows:

> (c) "Broker" means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, **AUCTIONS**, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, **AUCTION**, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same,

including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that he is engaged in the business of appraising, **AUCTIONING**, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. The term "broker" also includes any person who is a partner, officer, or director of a partnership or corporation which acts as a broker.

The two parties clearly took advantage of the petitioner in that they conspired to cancel this contract and immediately entered into a new listing agreement and sold the property before the April 30, 1991 listing expired. The defendants theory that "Harrow" was really an Auctioneer, not a broker was bogus.

Dillard Keen stated he was inactive in real estate. However, he was licensed at the time of this transaction, and active until 1996 He was not ignorant towards real estate transactions.

To furthur clarify the situation, when cross examined by Dale Vash (Appendix 11, Page 134, Transcript Pg 99, Lins 16-21)

16. Q. Did you ever actually practice selling real
17. estate as a real estate salesman?
18. A. Six months.
19. Q. Did you go through all the courses you needed
20. to take to become a real estate salesman?
21. A. 1975 I had.

This answer misled the judge. For Dillard Keen to continue to be a real estate salesman (which he was), he had to take the 14 hours of continuing education, like any other real estate salesman, every 2 years up until 1996.

Oral evidence was allowed to modify the contract. Judge Castor was bizarre and outrageous in his ruling. It is a clear lack of due process for the petitioner to have his contract completely rewritten by Judge Castor. He exceeded his legal authority when he departed from the essential requirements of law.

A persons right to enter into binding contracts is guaranteed by both the United States Constitution and Common Law. Under the 5th and 14th amendment, that no

person shall be deprived of life, liberty and property without due process of law. "A court should not remake a contract for the parties under the guise of interpreting it."

The Florida Real Estate Commission Handbook, State of Florida, (Appendix 17, Page 287) exclusive right of sale listing is defined as: An exclusive right of sale listing contract is one in which the owner gives an exclusive listing to one broker and agrees in writing to pay the broker's commission, even if the owner sells the property during the life of the contract. This listing must be supported by a valuable consideration and must be in writing.

It also talks about manner of termination. A contract may be terminated in any one of the following ways:

(1.) By lapse of the time specified in the contract; (2.) A lapse of reasonable time when no time is fixed; (3.) A revocation by a party entitled to revoke; (4.) By abandonment by both and sometimes by one of the parties; (5.) By renunciation of both parties; (6.) By breach by one of the parties which gives an election to terminate by the party not in default and sometimes may be anticipatory, that is, in advance of the time of performance as stipulated in the contracts.

Clearly, both parties did not terminate this contract. There couldn't have been any abandonment since 12 days was all that passed before the cancellation theory commenced.

The Florida Real Estate Commission handbook under the State of Florida also deals with auctioneers. (Appendix 17, Page 288) (Auctions and auctioneers are under the miscellaneous section.) Unfortunately, most people are not familiar with the auction process. Through the use of good legal tactics, a judge could easily be confused. The Real Estate Commission handbook describes auctions and auctioneers as:

"An auction is a specialized form of selling, well adapted to certain situations. After describing property to an assembly of possible prospects, orai bids are taken by the auctioneer, and the property is sold to the highest bidder who can meet the terms of sale. By custom, an auctioneer is permitted to represent both parties, maintaining an impartial attitude toward each. He may even execute the contract of sale for each party. The same rules as to truthful representations and fair dealings apply to an auctioneer as apply to any real estate broker. The statute goes on to talk about by-bidders but that has no merit in this situation. It also goes on to say that a seller may legally protect himself from having his property sold at an unreasonably low price at auction by establishing a minimum bid. That is by giving notice to the bidders that no bid less than a minimum will be considered. However, very important in this situation it talks about the words "terms of sale" in the first paragraph "who can meet the terms of sale".

The defendants/respondents attorney was very clever in using the dates of closing of the auction date to "camouflage and cloud" the issues. In their argument to the court, they confused the issues by using Section 2. (iv) (c) (closing); Exclusive Listing Agreement (Appendix 1, Page 7). The closing shall be scheduled no earlier than January 2, 1991 and no later than January 31, 1991. These closing dates were meant only so that the auction itself would have parameters for a closing date for the buyers. Judge Castor erroneously allowed these dates to say that the contract was ambiguous because of two dates. This date and the date of the exclusive right to sell of April 30, 1991. However, on the first page of the contract; number I, it clearly states "Grant of Exclusive Right to Sell". It goes on to state for a period beginning as of the date hereof and ending on April 30, 1991, sellers grant brokers the exclusive right and authority, as their agents to sell the aforesaid real property upon the terms and conditions hereinafter set forth with such other terms and conditions upon which the parties agree upon in writing. This was on the first page of the contract.

The closing had to do only with the auction. It was on the second page of the contract. It was under the section of "terms of sale". It was clear to all the parties at the time of signing. To come back later on and say they were confused is just as incredulous as canceling the contract on December 13, 1990, even

before the proposed January 2, 1991 closing date. Judge Castor allowed the "Intent to violate Florida Statute, Conversion, and Conspiracy to Defraud" (F.S. 475.25), clearly taking away due process from the petitioner. Dillard Keen, Lillian Keen and Don Williams conspired even before the closing date which they said was ambiguous from January 2, 1991 to January 31, 1991, sending out a listing cancellation agreement. Judge Castor failed to recognize this.

The judge allowed oral evidence at the trial, and unfortunately turned the case into a liar's match. The contract stood on its own, it was quite clear. The respondent/defendant argued that since the plaintiff's attorney wrote the contract, it should be weighed against him. (Transcript Pg 53, Line 21-24) (Appendix 11, Page 88)

21. One term says he's entitled to
22. commission through April 30th. The other says in
23. order for the broker to be entitled to commissions,
24. it must be closed by January 31st.

To further reiterate how the brokers would be paid, Section 3. **AGREEMENT GRANTING EXCLUSIVE RIGHT TO SELL AND AUCTION REAL PROPERTY**, clarifies it even further (Appendix 1, Page 8)

3. Broker's Commission:

(a) A commission of ten percent (10%) of the Total Purchase Price (as defined above) shall be paid by the purchaser as an additional charge or cost of purchase. Said commission shall be described and included in Sellers' contract with the purchaser and said commission shall be paid in cash at closing..

(b) In the event Sellers, on their own or through others, contract to sell the real property during the term of this Agreement, Brokers shall be entitled to payment of a commission from Sellers in the amount of 10% of the purchase price at the time the transaction closes.

(c) In the event a purchaser procured, contacted, or disclosed to Sellers by Brokers during the term of this Agreement enters into a contract with Sellers for the purchase of the real property within 180 days after the date of the termination of this Agreement, Brokers shall be entitled to payment of a commission from Sellers in the amount of 10% of

the purchase price at the time the transaction closes.

(d) The Brokers (ie, Williams and Harrow) agree that any commissions earned pursuant to this Agreement shall be split 50/50 between them.

NOTE: Section (a) Buyers Premium 10% (Definition later in Contract)

Section (b) Sellers Fee 10%

Section (c) specifies extending contract six additional months beyond April 1, 1991 in case broker discloses possible buyer.

Section (d) defines how broker(s) would split the commission.

It was very clever of Mr. Jeske to come up with this "ambiguous language theory" in the contract, as Judge Castor must have fallen for it "hook, line and sinker". The dates (January 2-31, 1991) were clearly stated, the "terms of closing" under the auction section of the contract. To use this to make the contract ambiguous didn't make any sense. Once again, there is no ambiguity in the contract. Anyone familiar with auctions would understand how the terms of the sale were set up. The terms of sale very clearly had nothing to do with the granting of the exclusive

right to sell. (Appendix 1, 2. (b), Page 7) The witness' testimony was so biased it should carry no weight. First, she was an employee of Dillard Keen, then goes on to marry the codefendant Don Williams. This is a soap opera in itself. (Transcript Pg 83, Line 12, Page 84, Lines 9-11, and Page 87, Line 16-19)(Appendix 11, Pages 118, 119, and 122). The defendants attorney stated in their defense and Appellee's briefs that the auction did not take place. However, the transcript by Mrs. Williams, contradicts their arguments. (Transcript Pg 84, Lines 23-25) (Appendix 11, Page 119). It appears the judge took oral evidence as gospel from parties to repudiate a written contract. Meanwhile, all the witnesses were either related through marriage or were monetarily involved as plaintiffs.

To allow this fraud to take place would be a unfair miscarriage of justice.

NATURE OF RELIEF SOUGHT

Petitioner requests this court to issue an order to show cause to Respondent herein and ultimately enter its writ of certiorari to the Circuit Court for the Thirteenth Judicial Circuit, In and for Hillsborough County, State of Florida, compelling the lower courts to reverse their orders granting and affirming the judgment, in favor of the plaintiff.

ARGUMENT

THE CIRCUIT COURT, SITTING IN ITS APPELLATE CAPACITY, DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW WHEN IT FAILED TO REVERSE THE COUNTY COURT'S FINAL JUDGMENT BECAUSE OF THE COUNTY JUDGE'S CLEARLY ERRONEOUS APPLICATION OF THE PAROL EVIDENCE RULE AND ITS GROSS DEPARTURE FROM THE JUDICIAL STANDARDS OF CONTRACT INTERPRETATION WHEN A WRITTEN CONTRACT FOR THE SALE OF REAL ESTATE WAS SIGNED BY ALL PARTIES

Although the courts allow parol evidence to be entered in the cases where ambiguity exists, this ambiguity should allow only oral evidence to clarify that ambiguity. Clearly it should not allow oral evidence to re-write a whole contract. The judge erred in his decision. (Please read Initial Brief of Appellant, Andrew M. Harrow [Appendix 12, Pages 179-223] and Reply Brief of Appellant, Andrew M. Harrow [Appendix 16, Pages 271-283] for case laws.)

The Circuit Court was not prepared to hear this case and should have withdrawn. Judge Arnold was unprepared. Judge Arnold, in opening, stated that the case would be better heard by the Appellate Court with a panel of three judges. His handling of the case was 'bizarre', to say the least. He could not find the file and proceeded to hear part of the case. Evidently he never read the

brief by the appellate's attorney, because he suggested that the attorney, Dale Vash of Fowler, White, Etc., tell him about the case. It was quite an 'unorthodox' hearing. The judge, at the end of the case, asked his secretary to get him the file, and the secretary told him it was right there on his couch the whole time. The judge said he would consider the case and mail on his decision. The next day the judge rubber-stamped the case "confirmed". It is my opinion that the judge never even looked at the file because only one day elapsed. It is a completely unprofessional "action" for a judge. In my opinion, **"(IF YOU DON'T HAVE A FILE, YOU DON'T HAVE A TRIAL)"**. Judge Arnold should not have heard the case this way because he could not use professional expertise to evaluate the case.

The question also arose of whether the plaintiff's attorney requested the reimbursement of the additional fifteen hundred dollars ($1,500.00). The defense used the argument that since it was not asked for specifically, it should be denied, however, this has no merit since the county judge allowed the testimony to be heard, and no defense was given that it wasn't an expense.

Harrow's auction efforts must have even been the "probable cause" of sale, because for 4 years Williams couldn't sell the property. (Transcript, Page 62, Lines 23-25 and Page 63, Lines 1-8) (Appendix 11, Pages 97 & 98). Suddenly it sells shortly after the auction (Transcript, Page 9 Lines 23-25 and Page 10,

Lines 1-9) (Appendix 11, Pages 43 & 44) earning Williams a commission of $12,850.00.

If anyone was to be 'naive' it was 'Harrow'. He put up the balance of the advertising money.

CALENDAR OF EVENTS:

October 26, 1990	Auction Agreement Date
December 1, 1990	Auction Date
*December 13, 1990	Williams and Keen draft Listing Cancellation Agreement for Harrow to sign (12 days after auction). (Appendix 12, Page 220)
*December 24, 1990	Williams send letter to 'Harrow' Ref: Cancellation Idea (Appendix11, Page 104, Transcript Page 69) (Williams refers to the date as September 24, 1990 in error)
*January 11, 1991	Cancellation Letter sent by 'Keens' and 'Williams' to 'Harrow'
January 2-31, 1991	Auction Closing Dates - or Purported Closing Dates
February 26, 1991	'Williams' procures a buyer (approximately 60 days after the auction.) Williams previously had a listing with the Keens for 3-4 years with no offers.
April 1, 1991	Real Property is Sold to New Owner by Warranty Deed
April 30, 1991	Exclusive Right to Sell Expiration Date
October 30, 1991	Expiration of Registered Buyers by Brokers

The arguments the defendants used regarding ambiguity and confusing closing dates make no sense whatsoever.

They canceled the "Exclusive Right to Sell" even prior to the closing date they argued was "ambiguous".

* Dillard Keen, Don Williams and Mrs. Williams testified that Andrew Harrow orally agreed to accept the cancellation agreement, then why the disparity between the December 13, 1990 drafting of the Listing Cancellation Letter and the date it was sent on January 11, 1991.

PETITION FOR WRIT OF COMMON LAW CERTIORARI

The petitioner, Andrew M. Harrow, pro se, hereby submits this petition for writ of common law certiorari and states as follows:

Reason # 1

The lower court Judge violated Rule 10(a):

Rule 10. Considerations Governing Review on Certiorari
(a) ..... or has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

The Judge used two wrong methods. The defendants' attorney applied the following deductive methods:
(1) The quantity of witnesses prove who is telling the truth.
(2) Defendants' attorney changed plaintiffs' testimony in closing arguments.

Reason #2

The defendants' attorney presented evidence allowed in under the theory of multiple people testifying as against one individual (see transcripts Pg 41, line 25 and Pg 42, Lines 1- 5).

25. Q. If Mr. Keen and Mrs. Keen and Don Williams
1. and Gail, who was working for the Keens, all testified
2. you said that, would they all be telling a misstatement?
3. A. That's without a doubt, they would be.
4. That's to cut me out of the picture, of course.
5. Q. You'd be the only one here telling the truth?

For example: If a large number of Nazi's said "no Jews were killed in the Holocaust" than that must be a correct statement. There seems to be prevailing anti-Semitism in Central Florida. This attitude may have been reflected in the judges' decision.

The judge allowed such legal tactics to be applied in this case. He also allowed the defendants attorney, Mr. Jeske, to change my statement in his closing arguments.

(From Transcripts, Pg 46, Line 22-24) (from Andrew Harrow's testimony)

22. Q. Did you ever give an invoice to Mr. and
23. Mrs. Keen saying that you had spent $3,000?
24. A. I don't remember

(From Transcripts, Pg 131, Lines 20-22) (from Mr. Jeske's closing arguments

20. ..... He's admitted, he
21. quite candidly told the Court, told us, no, he
22. never sent him an invoice.

Reason #3

The right to enter into binding contracts is guaranteed by both the United States Constitution and common law. "Nor shall any person be deprived of life, liberty, or property, without due process of law." Article (V) of the U.S. Constitution "No state shall make or enforce any law whcih shall abridge the priviledges or immunities of citizens of the United Stated nor shall any state deprive any person or life, liberty, or property without due process of law." Article (XIV) Section 1 of the U.S. Constitution.

Oral evidence shouldn't have been allowed to topsy turvy a contract. The contract stood on its own. To allow this contract to be set aside by oral evidence would allow all courts to act in their own discretion and to re-write anyone else's contract.

The contract was clear. For the defendants' to complain of lack of understanding, and who drafted the contract is ludicrous. This is akin to taking someone's property without just compensation. Unfortunately, no one took the time to carefully read the contract and understand the auction scenario.

Reason #4

The lower courts position was bizarre and outrageous not allowing me to be reimbursed my expenses of $1,500.00. It was preposterous and contradictory to allow only one thing to be upheld in the contract, only legal fees against plaintiff. Furthermore, each higher court took a Laisse-Faire attitude toward the case.

The appeals judge (Judge Arnold) couldn't find the file on the day of court and heard bits and pieces from the attorneys, then signed the order the next day. So much for due process.

The 2nd DCA denied me lack of due process as an opinion should have been written. I understand the court doesn't have to write one. However, if the case was reviewed properly, then it would be just as easy to write an opinion either way. They simply took light of the case. I was denied due process, once again.

Reason #5

Every person should be allowed a full appellate court hearing in front of 3 panel judicial system; regardless of county or circuit court.

It is prejudicial to minority individuals to establish a different system of review at different levels of the court system.

Reason #6

I hereby request a trial by jury (if possible) as that is my constitutional right.

(From the Constitution of the United States)
ARTICLE (VII) In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law.

I believe I have this right, even though it was never requested prior. Judge Caster shouldn't be allowed to be Judge, Jury, Executor and re-drafter of contracts.

CONCLUSION

This case should be just as important, or more important in principle than the Bill Clinton sex scandal. I respectfully request a complete review of the case. An opinion should be written by the Supreme Court (for or against).

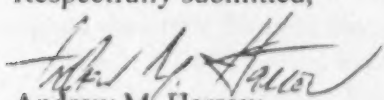
I respectfully request the following:

1. This case be reversed in favor of Plaintiff
2. Alternative: The case be remanded to the lower courts for rehearing.

I respectfully request that a stay of judgment be adopted until this case is finalized. An attorney should not be allowed to change a defendants' reply.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Andrew M. Harrow
March 9, 1999

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

Andrew M. Harrow - PETITIONER
VS.
The Don Williams Corporation (Dissolved 8/23/96)
Dillard Keen & Lillian Keen - RESPONDENT(S)

PROOF OF SERVICE

I, Andrew M. Harrow, do swear or declare that on this date, January 27, 1999, and re-sent on March 9, 1999, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OR CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:
Paul T. Jeske, Esquire, Sprague & Jeske, PA, 1904 E Busch Blvd,Tampa, Fl 33612, Jeffrey A. Aman, Esquire, P.O. Box 271370, Tampa, FL 33688-1370

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 1999, and on March 9, 1999

Andrew M. Harrow

IN THE COUNTY COURT, IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

ANDREW M. HARROW,

Plaintiff,

-v-

Case No: 95-14981-CC
Division "I"

THE DON WILLIAMS CORPORATION a Florida corporation, DILLARD KEEN and LILLIAN KEEN,

Defendants.
_____/

FINAL JUDGMENT FOR DEFENDANTS

THIS MATTER came on for final hearing (non-jury) on the 27th day of September, 1996, commencing at 2:00 p.m. Present before the Court were the parties together with each party's attorneys. After having heard the testimony of all parties and witnesses called by the parties, and having considered all pleadings and evidence submitted at the time of the final hearing, the Court finds as follows:

1. Plaintiff and the Defendants entered into an agreement entitled "AGREEMENT GRANTING EXCLUSIVE RIGHT TO SELL AND AUCTION REAL PROPERTY" on the 26th day of October, 1990. Said agreement was prepared by the Plaintiff, ANDREW M. HARROW. The Court finds that the agreement was ambiguous and therefore subject to parole evidence to explain its meaning.

2. Based upon the testimony of the parties and witnesses, the Court finds that the Defendants had no legal duty to pay to the Plaintiff, ANDREW M. HARROW, any sums complained of in

EXHIBIT A

this litigation.

3. The Defendant, THE DON WILLIAMS CORPORATION, was represented by Attorney Jeffrey A. Aman, the Defendants, DILLARD & LILLIAN KEEN, were represented b Attorney Paul T. Jeske. Both the Defendants, THE DON WILLIAMS CORPORATION and the KEENS, are obligated to pay their attorneys a fee. Pursuant to the terms of the contract which was the subject matter of this litigation, the Defendants may be entitled to payment of reasonable attorney's fees and costs.

WHEREFORE, it is hereby ORDERED & ADJUDGED as follows:

a. Plaintiff, ANDREW M. HARROW, shall take nothing by this action and Defendants, THE DON WILLIAMS CORPORATION, a Florida corporation, and DILLARD KEEN and LILLIAN KEEN, shall go hence without day.

B. The Court shall retain jurisdiction for the purpose of determining the issue of attorney's fees and costs.

DONE & ORDERED in Chambers at Tampa, Hillsborough county, Florida, this _____ day of October, 1996.

ORIGINAL SIGNED
OCT 07, 1996
S/JUDGE DON CASTOR
COUNTY JUDGE

CC: Furnished to:

PAUL T. JESKE, ESQ.
1904 E. Busch Blvd.
Tampa, FL 33612

JEFFREY A. AMAN, ESQ.
P.O. Box 271370
Tampa, FL 33688-1370

DALE W. VASH, ESQ.
P.O. Box 1438
Tampa, FL 33601

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA. CIVIL DIVISION

ANDREW M. HARROW,

Appellant,

Appellate No.: 97-788

vs.

County Court
Case No: 95-14981

Division "A"

THE DON WILLIAMS CORPORATION
DILLARD KEEN and LILLIAN KEEN,

Appellees.
_____/

ORDER AFFIRMING COUNTY COURT

THIS CAUSE having come before the Court upon Appellee's, appeal of Hillsborough County Court Case No. 95-14981. The Court having reviewed the file and all the pleadings and Briefs filed therein and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the final Judgment entered on October 7, 1996, subsequent order Denying Plaintiff's Motion for Rehearing or Reconsideration entered on January 3, 1997 and the Judgment entered by the lower court awarding attorneys fees is hereby affirmed.

DONE and ORDERED in Chambers, at Tampa, Hillsborough County, Florida, this ____ day of July, 1998.

RECEIVED
JUL 31, 1998
JUDGE
S/JAMES D. ARNOLD

JAMES D. ARNOLD, Circuit Judge

Copies furnished to:
Dale W. Vash, Esquire
Paul T. Jeske, Esquire
Jeffrey A. Aman, Esquire
Honorable Don Castor

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA , NOVEMBER 2, 1998

ANDREW M. HARROW,)
)
Petitioner(s),)
vs.) Case No: 98-03333
)
THE DON WILLIAMS CORP)
et al.,)
)
Respondent(s).)
_____)

BY ORDER OF THE COURT:

T.C. No. 97-788

Petitioner having filed a petition for writ of certiorari, upon consideration, it is ordered that the petition is hereby denied.

FRANK, A.C.J., and NORTHCUTT and GREEN, JJ., Concur.

I HEREBY CERTIFY THE FOREGOING
IS A TRUE COPY OF THE ORIGINAL
COURT ORDER.

S/WILLIAM A. HADDAD, CLERK

FILE STAMP:
DISTRICT COURT
OF APPEALS
SECOND DISTRICT
SAT CITO SI RECTE
STATE OF FLORIDA

c: Andrew M. Harrow
Paul T. Jeske, Esq.
Jeffrey A. Aman, Esq.
Honorable Richard L. Ake
Golden Gavel, Auctioneers

/SC